

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 18, 2008

STATE OF TENNESSEE v. ZACHARY DESMOND NEIL

Direct Appeal from the Criminal Court for Sullivan County
No. S52,460 Robert H. Montgomery, Jr., Judge

No. E2008-00712-CCA-R3-CD - Filed October 15, 2009

Defendant, Zachary Desmond Neil, appeals the trial court's revocation of his community corrections sentence and the imposition of a sentence of confinement. Following our review of the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ROBERT W. WEDEMEYER, JJ., joined.

Stephen M. Wallace, District Public Defender; and Leslie S. Hale, Assistant Public Defender, Blountville, Tennessee, for the appellant, Zachary Desmond Neil.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; H. Greeley Welles, Jr., District Attorney General; and J. Lewis Combs, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

On March 20, 2007, Defendant pled guilty to two counts of aggravated burglary, one count of theft under \$500, and one count of theft over \$1000. The trial court sentenced Defendant to four years for each of the aggravated burglary convictions and for theft over \$1,000. Defendant was sentenced to 11 months and 29 days for the theft under \$500 conviction. The trial court ordered the sentences to run concurrently for an effective four-year sentence to be served on community corrections at the John R. Hay House (Hay House).

A warrant for violation of community corrections was filed on June 28, 2007, alleging that Defendant had absconded by failing to return to the Hay House after work. On December 17, 2007, the trial court enhanced Defendant's sentence to six years on community corrections. A second

warrant for violation of community corrections was filed on January 31, 2008, again alleging that Defendant had failed to return to the Hay House after work.

At the revocation hearing, Defendant admitted to the violation and admitted that it was his second violation for absconding from the Hay House. Defendant testified that he left the Hay House program on January 24, 2008, because he heard from one of the residents at the house that the police were looking for him. Defendant did not know why the police were looking for him, so he decided to leave until he found the reason. Defendant said that he was taken back into custody on February 25, 2008, after being stopped at a roadblock. He testified that from the time that he absconded until the time of his arrest, he worked “under the table” for various individuals in an effort to avoid being arrested. Defendant said that he did not use any illegal drugs after he left the Hay House; however, he admitted that he consumed alcohol which was a violation of his community corrections sentence. He testified that for the few weeks that he was at the Hay House prior to absconding, his drug test was clean, and he was working for C&A construction. Defendant said that he also paid his weekly rental fees for the program.

At the conclusion of the revocation hearing, the trial court stated:

I mean, Mr. Neil, probably the most fundamental thing as a Judge that I do when I place somebody on probation or community corrections is, is that, you know, they’ll be where they say, people will be where they say they’re going to be and, you know, do what they’re asked to do by people at community corrections or the probation officer, and I mean, you know, the first time I went ahead and said, well, you know, one of the options is, is that there are consequences so I kept you in jail for a period of time thinking that once you came out you would kind of get the idea of how it’s supposed to work. And just a few weeks later, a short period of time later, I mean you just take off again. I mean you don’t ask. I mean it’s not like you don’t know people that - - - I mean your step-father used to work for the sheriff’s office. I mean he knows lawyers. He understands how the system works. I mean, you know, you said you called him but instead of waiting around to find out what’s going on, have him check into it, to check on the full situation, you just take off. I mean it’s kind of like you decide that you want to do what you want to do rather than what I’ve asked you do through the probation officer and through community corrections. And so I feel like that really - - - I mean since you already did this once before and didn’t learn that time really the only option I’ve got right now is to ask you to serve your sentence.

The trial court revoked Defendant’s community corrections sentence and ordered him to serve his six-year sentence in confinement.

II. Analysis

The decision to revoke a community corrections sentence or probation rests within the sound discretion of the trial court and will not be disturbed on appeal unless there is no substantial evidence to support the trial court's conclusion that a violation had occurred. State v. Harkins, 811 S.W.2d 79, 82-83 (Tenn. 1991)(applying the probation revocation procedures and principles contained in Tennessee Code Annotated section 40-35-311 to the revocation of a community corrections placement based upon "the similar nature of a community corrections sentence and a sentence of probation"). The trial court is required only to find that the violation of probation or community corrections occurred by a preponderance of the evidence. See T.C.A. § 40-35-311(e); see also id. § 40-36-106(e)(3)(B). In reviewing the trial court's findings, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious judgment rather than an arbitrary one. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). After finding a violation of a defendant's community corrections, the "court may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in any community based alternative to incarceration." T.C.A. § 40-36-106(e)(4).

Defendant argues that because he had "substantially complied with the terms of his community corrections supervision," the trial court abused its discretion by revoking his community corrections sentence and ordering him to serve his six-year sentence in confinement. However, Defendant admitted that he violated his community corrections sentence by absconding from the Hay House for the second time when he heard that police were looking for him. He testified that he worked "under the table" for various individuals for the month that he was gone from the Hay House in order to avoid being arrested. Defendant further admitted that he consumed alcohol during that time in violation of the conditions of his community corrections sentence.

Based on our review of the record, we conclude that the trial court did not abuse its discretion in finding that Defendant had violated the conditions of his community corrections and ordering him to serve his six-year sentence in confinement

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

THOMAS T. WOODALL, JUDGE